

Remarks

This Amendment responds to the final Office Action mailed on July 23, 2008 and is being enclosed with a Request for Continued Examination (RCE) submitted concurrently herewith. This Amendment represents a fully responsive submission, as required under 37 CFR § 1.114. Claims 1-3, 5, 8-19, 21, and 22 are pending. Claims 1, 8, 13, 18, and 19 have been amended. Claim 20 has been cancelled. Claims 21 and 22 are new. In view of the following remarks and the forgoing amendments, Applicants respectfully submit that this application is in complete condition for allowance and request reconsideration of the application in this regard.

Rejection of Claims under 35 U.S.C. § 102(b)

Claims 1-3, 5, 8-10, 12, 13, 15, and 20 over Volkl

Claims 1-3, 5, 8-10, 12, 13, 15, and 20 stand rejected under 35 U.S.C. § 102(b) as anticipated by U.S. Pat. No. 6,390,799 to Volkl et al. (hereinafter *Volkl*). Of the rejected claims, claims 1 and 13 represent the remaining independent claims. The Examiner contends that *Volkl* shows all the elements of the rejected claims. Applicants respectfully disagree with this contention.

Applicants' independent claim 1, as amended, sets forth "the forming space having first and second sections, the wall including a slit between the first and second sections of the forming space and an output opening, the second section disposed between the slit and the output opening" and further recites "the wall bounding the first and second sections having a unitary construction". Support for the latter amendment is found at least at page 6 of Applicants' specification, in which the slit is described as failing to extend about the full circumference of the wall so that the wall having a unitary construction across the sections of the forming space, and is reproduced for the Examiner's consideration below:

The portioning device according to the present invention may be further refined by having the wall delimiting the forming section cylindrical and having the slit almost completely penetrate the wall. Here the slit may for extend for example around some 180°-350°, particularly preferably 210°-350° of the circumference of the wall, thereby enabling an especially simple introductory motion of the cutter. At the same time, such a design of the slit allows especially easy cleaning of the portioning device according

to the present invention, which is particularly advantageous if the portioning device is used for portioning foodstuffs.

In contrast, *Volkl* has a wall (shaping tube body 53) defining a forming space, which terminates at the top surface of the cutting device (65). A calibration plate (47) is located beneath the cutting device (65) and is movable relative to the shaping tube body (53) in the direction (77). As apparent from Figure 2, the wall (53) and the calibration plate (47) lack a unitary construction as these two components are separate and distinct. In order for a reference to anticipate the invention in a claim, the reference must teach each and every element in the precise arrangement set forth in the claim. Because of the aforementioned deficiencies, *Volkl* fails to anticipate Applicants' independent claim 1. Therefore, for at least this reason, Applicants respectfully request that the Examiner withdraw the rejection.

Because claims 2, 3, 5, 8-10, 12, 13, and 15 depend from independent claim 1, Applicants submit that these claims are also patentable. Furthermore, each of these dependent claims recites a unique combination of elements not disclosed or suggested by *Volkl*.

Independent claim 13, as amended, is patentable for at least the same or similar reasons as independent claim 1, as remarked above. Specifically, *Volkl* fails to disclose "the forming space having first and second sections, the wall including a slit between the first and second sections of the forming space and an output opening, the second section disposed between the slit and the output opening" and "the wall bounding the first and second sections having a unitary construction". Because claim 15 depends from independent claim 13, Applicants submit that this claim is also patentable for at least the same reasons discussed above. Furthermore, dependent claim 15 recites a unique combination of elements not taught, disclosed or suggested by *Volkl*. Specifically, *Volkl* fails to disclose that a conveyor belt that is discontinuously operable cooperating with the introductory motion of the cutter. Consequently, Applicants respectfully request that the rejection of claims 13 and 15 be withdrawn.

Claims 1-3, 5, 8-10, 12, 13, and 16 over Rosenstone

Claims 1-3, 5, 8-10, 12, 13, and 16 stand rejected under 35 U.S.C. § 102(b) as anticipated by U.S. Pat. No. 2,101,755 to Rosenstone et al. (hereinafter *Rosenstone*). Of the rejected claims, claims 1 and 13 represent independent claims. The Examiner contends that *Rosenstone* shows all the elements of the rejected claims. Applicants respectfully disagree with this contention.

In contrast to Applicants' independent claim 1, as amended, *Rosenstone* has a wall (7) defining a forming space, which terminates at the top surface of the cutting device (16). Spacer plates (22, 23) separate the wall (7) from plates (9, 10). Hence, the shaping body (53) and the plates (9, 10) lack a unitary construction as these two components are separate and distinct. In order for a reference to anticipate the invention in a claim, the reference must teach each and every element in the precise arrangement set forth in the claim. Because of the aforementioned deficiencies, *Rosenstone* fails to anticipate Applicants' independent claim 1. Therefore, for at least this reason, Applicants respectfully request that the Examiner withdraw the rejection.

Because claims 2, 3, 5, 8-10, and 12 depend from independent claim 1, Applicants submit that these claims are also patentable. Furthermore, each of the dependent claims 2, 3, 5, 8-10, and 12 recites a unique combination of elements not disclosed or suggested by *Rosenstone*.

Independent claim 13, as amended, is patentable for at least the same or similar reasons as independent claim 1, as remarked above. Specifically, *Rosenstone* fails to disclose "the forming space having first and second sections, the wall including a slit between the first and second sections of the forming space and an output opening, the second section disposed between the slit and the output opening" and "the wall bounding the first and second sections having a unitary construction". Because claim 16 depends from independent claim 13, Applicants submit that this claim is also patentable for at least the same reasons discussed above. Furthermore, this claim recites a unique combination of elements not taught, disclosed or suggested by *Rosenstone*. Consequently, Applicants respectfully request that the rejection of this claim be withdrawn.

Claims 1-3, 5, 8-13, and 16 over Ackerman

Claims 1-3, 5, 8-13, and 16 stand rejected under 35 U.S.C. § 102(b) as anticipated by U.S. Pat. No. 2,500,973 to Ackerman et al. (hereinafter *Ackerman*). Of the rejected claims, claims 1 and 13 represent independent claims. The Examiner contends that *Ackerman* shows all the elements of the rejected claims. Applicants respectfully disagree with the Examiner's contention.

In contrast to Applicants' independent claim 1, as amended, *Ackerman* has a wall (10) defining a forming space, which terminates at the top surface of the cutting device (22). Flange (30) defines a space for the cut portions and is located between the wall (20) and a gate (68).

Flange (30) and wall (100) lack a unitary construction as these two components are separate and distinct. In order for a reference to anticipate the invention in a claim, the reference must teach each and every element in the precise arrangement set forth in the claim. Because of the aforementioned deficiencies, *Ackerman* fails to anticipate Applicants' independent claim 1. Therefore, for at least this reason, Applicants respectfully request that the Examiner withdraw the rejection.

Because claims 2, 3, 5, 8-12, and 16 depend from independent claim 1, Applicants submit that these claims are also patentable. Furthermore, each of these dependent claims recites a unique combination of elements not disclosed or suggested by *Ackerman*.

Independent claim 13, as amended, is patentable for at least the same or similar reasons as independent claim 1, as remarked above. Specifically, *Ackerman* fails to disclose a "the forming space having first and second sections, the wall including a slit between the first and second sections of the forming space and an output opening, the second section disposed between the slit and the output opening" and "the wall bounding the first and second sections having a unitary construction". Consequently, Applicants respectfully request that the Examiner withdraw the rejection of independent claim 13.

Claim Rejection under 35 U.S.C. § 103(a)

Claims 11 and 16-19 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over *Volkl*. Because claims 11 and 16-19 depend from independent claim 1, Applicants submit this claim is also patentable for at least the same reasons discussed above. Furthermore, dependent claims 11 and 16-19 each recite a unique combination of elements not disclosed or suggested by the proposed modification of *Volkl*. Consequently, Applicants respectfully request that the Examiner withdraw this rejection.

Claim 14 stands rejected under 35 U.S.C. § 103(a) as being unpatentable over *Volkl* in view of U.S. Patent No. 5,230,267 to Abler (hereinafter *Abler*). *Abler* fails to remedy the deficiencies of *Volkl*. Because claim 14 depends from independent claim 13, Applicants submit this claim is also patentable for at least the same reasons discussed above. Furthermore, dependent claim 14 recites a unique combination of elements not disclosed or suggested by the combination of *Volkl* with the secondary reference *Abler*. Consequently, Applicants respectfully request that the rejection of this claim be withdrawn.

New Claims:

Claims 21 and 22 have been submitted as new claims that recite unique combinations of elements not taught, disclosed or suggested by the art of record. Claim 21 depends from independent claim 1 and claim 22 depends from independent claim 13, which are patentable for reasons discussed hereinabove.

Conclusion

Applicants have made a bona fide effort to respond to each and every requirement set forth in the Office Action. In view of the foregoing amendments and remarks, this application is submitted to be in complete condition for allowance. Accordingly, a timely notice of allowance to this effect is earnestly solicited. In the event that any issues remain outstanding, the Examiner is invited to contact the undersigned to expedite issuance of this application.

Applicants do not believe fees are due in connection with filing this communication, other than the Request for Continued Examination fee. If, however, any petition or additional fees are necessary as a result of this communication, the Commissioner is hereby authorized to charge any under-payment or fees associated with this communication or credit any over-payment to Deposit Account No. 23-3000.

Respectfully submitted,
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